



Patent
Attorney's Docket No. 1018798-000171

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of) MAIL STOP APPEAL
Anna-Carin Elfstrom et al.) Group Art Unit: 3761
Application No.: 10/612,154) Examiner: MELANIE JO HAND
Filed: July 3, 2003) Confirmation No.: 4120
For: ABSORBENT PRODUCT FOR MEN)
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PRE-APPEAL BRIEF CONFERENCE REQUEST

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the Office Action dated June 6, 2007, and the Advisory Action dated September 18, 2007, Applicants hereby request a Pre-Appeal Brief Conference Request.

The claims have been rejected under 35 U.S.C. §103(a) as being obvious over USP 4,675,012, hereinafter *Rooyakkers* in view of USP 4,023,216, hereinafter *Li*, and in some cases USP 6,023,789, hereinafter *Wilson*.

Rooyakkers discloses an incontinence pouch 40 that is held in place by a typical male brief 44. The Examiner alleges that *Rooyakers* teaches that both the liquid-impermeable and liquid-permeable layers extend **beyond** the absorption body and are mutually joined together. Applicants have repeatedly requested the Examiner to specifically point out the portions in *Rooyakers* that allegedly discloses that feature. In response to Applicants' requests, the Examiner provided a **summary** of *Rooyakers*. However, the summary did not indicate specifically where in *Rooyakers* this alleged disclosure may be found. Accordingly, Applicants submit that the Examiner has failed to provide an adequate explanation to support the rejection.

Applicants have been unable to find any disclosure in *Rooyakers* that the liquid-impermeable and liquid-permeable layers are sealed beyond the edge of the absorbent layer, as required by the presently claimed invention. In fact, Applicants

respectfully submit that this feature is contrary to the teachings in *Rooyakers*. For example, *Rooyakers* states that “[o]nto this [impermeable] backing sheet is adhered an absorbent structure, the preferred absorbent structure being a **coform** material. The coform has adhered hereto a permeable body-side sheet.” Col. 3, ll. 39-42. That is, the absorbent layer has the permeable sheet attached to it, not the impermeable backing sheet.

Further, the description of Figure 19, a cross-section of an embodiment, discloses a pad formed with three layers: “first, a permeable body or genitals side layer 192; second, an absorbent layer 194; and third, an impermeable backing member 196.” Col. 5, ll. 10-13. Figure 19 does not show the impermeable and permeable layers joined to each other beyond the edge of the absorbent layer. At no point in *Rooyakers* is there any reference to the permeable sheet being joined to the impermeable backing beyond the absorbent body as alleged by the Examiner. Rather, as the evidence cited above shows, *Rooyakers* envisions the permeable sheet being adhered to the absorbent layer itself.

In addition, the presently claimed invention recites that it is the **absorption body** that is enclosed in a sheath of the two afore-mentioned layers. It also recites that the absorption body has a tapered end. Thus, the material *encased in the sheath* must have the tapered end.

The product of *Rooyakers* does not involve a discrete shaped absorbent body *in a sheath* that tapers into a narrower crotch portion as in the presently claimed invention, but rather contains an absorbent layer as part of a **single sheet** product comprised of multiple layers that can be folded to form a pouch. See, e.g., col. 2, ll. 55-58; see also Figs. 6-21. Although the resulting folded product of *Rooyakers* has a tapered end, the material that is encased is substantially rectangular and does not have a tapered end toward the crotch region as defined in the claims. Therefore, *Rooyakers* also fails to teach the tapering of the absorption body toward the crotch region, both recited in the independent claims of the present application.

At best, *Rooyakers* teaches a tapered product, i.e., the folded sheet 56. However, the folded sheet 56 is not an absorption body encased in a sheath.

Claim 1 further recites that a liquid barrier is on the liquid-permeable layer, at the narrower end section of the absorption body, so as to prevent urine emitted by

the user from leaking **from the surface of the absorption body** towards the crotch region of the user (claim 1). Claim 26 recites that the liquid barrier is arranged at the narrow end section of the absorption body so as to prevent urine emitted by the user from moving beyond the absorption body towards the crotch region of the user.

Claim 34 recites that the liquid barrier is at the narrow end section of the absorption body or between the narrow end and the wide end of the absorption body, and is arranged either between the liquid-tight layer and the liquid-permeable layer or on the liquid-permeable layer.

The Examiner acknowledges that *Rooyakers* does not disclose a liquid barrier applied on the liquid-permeable layer 192 at the narrower end section of the absorption body. For this deficiency, the Examiner alleges that *Li* teaches a portable urinal that contains a liquid-permeable absorbent material 18 disposed on the innermost surface of the urinal. The Examiner further alleges that *Li* teaches that the permeable material is arranged to prevent urine emitted by the user from leaking from the surface of the absorption body, citing column 3, lines 35 – 40. *Li* does not remedy these deficiencies of *Rooyakers*.

Li teaches a "urinal device" 10 that is made from a **nonabsorbent** material. *Li* includes a small strip of absorbent material 18. After use, the absorbent material 18 is used to "blot the vulva dry." Column 3, lines 33 – 36. The alleged barrier (absorbent material 18) disclosed by *Li* is the only absorbent material in the structure. However, as is clear from a careful reading of the reference, *Li* is **not** concerned with urine leaking from the absorbent material 18. *Li* is concerned with urine leaking from either the **nonabsorbent** device 10 or from the vulva. In fact, immediately after use, the absorbent material is flicked off and disposed. Column 3, lines 36 – 40.

There is no teaching or suggestion that the absorbent material 18 in *Li* could function as a liquid barrier, as required by the presently claimed invention. The absorbent material 18 of *Li* is designed to be readily removed upon prolonged exposure to water. Column 3, lines 25 – 28. Accordingly, the absorbent material 18 of *Li* is not equivalent to the claimed liquid barrier and in fact would be ineffectual in the presently claimed invention.

Furthermore, in the unlikely event that *Li* was combined with *Rooyakers*, *Li* would teach placing the absorbent body 18 (alleged by the Examiner to be the barrier) at the broader end of the pocket described by *Rooyakers*. In other words, it would be placed near reference numeral 43 in Figure 7 of *Rooyakers*. Accordingly, even the combined teachings would not result in the present invention.

Moreover, Applicants respectfully maintain that the art of female urinal devices is not analogous to the present invention, which relates to absorbent products for men. One seeking to improve an absorbent product would clearly not look to the female urinal device art. The Examiner argues that for art to be analogous, the prior art must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned. While Applicants do not dispute the case law cited by the Examiner in support of this proposition, Applicants respectfully submit that the Examiner has not satisfied this legal test. The Examiner makes several erroneous statements in support of her position. First, the Examiner states that the fact that *Li* describes a female urinal device is immaterial. Applicants respectfully submit that this basic fact of *Li* is **particularly material** to determining whether it is analogous art. A female urinal device is not in the same field of endeavor as a male incontinence product. Moreover, a device that permits a female to urinate comfortably and cleanly in uncomfortable or unsanitary conditions is not reasonably pertinent to the design of an effective male incontinence product.

The Examiner further states that the device of the presently claimed invention is "perfectly capable of collecting urine from a human female as well." This is incorrect. The device of the presently claimed invention has been explicitly designed with the male anatomy in mind, which obviously differs considerably from the female anatomy. A female with incontinence problems would not seriously consider the use of either the *Rooyakers* product or an embodiment of the presently claimed invention. Likewise, a male would not consider the use of the *Li* product for a urinal as the male anatomy naturally provides a solution to the direction of urine flow. Accordingly, Applicants respectfully disagree with the Examiner's position that the device of *Li* can also be used to collect urine from a human male.

Moreover, Applicants respectfully submit that a liquid barrier is unnecessary given the design of the *Rooyakers* product as shown in Fig. 7. As can be seen from this figure, the genitalia of the consumer are ensheathed in a pouch which has a water-impermeable backing. Thus, a liquid barrier such as that of the presently claimed invention would be unnecessary. There is simply no reason why one would be motivated to add a liquid barrier as claimed.

Additionally, as discussed above, there is **no discrete absorbent body** in *Rooyakers* to place the liquid barrier next to. There is no narrower crotch end of an absorbent body in *Rooyakers* – there is only a **single sheet** construction containing an absorbent layer running throughout. Accordingly, Applicants respectfully submit that there is no apparent reason to combine the absorbent material of *Li* with the pouch of *Rooyakers*, nor would it result in an embodiment of the presently claimed invention.

Accordingly, Applicants submit that the absorbent material 18 in *Li* identified by the Examiner does not overcome the deficiencies of the *Rooyakers* reference. Furthermore, even if they were readily combinable (which they are not), the combination would not result in the presently claimed invention. Applicants therefore respectfully submit that the rejection should be withdrawn.

Furthermore, *Wilson* also does not overcome the deficiencies of *Rooyakers* and *Li* as discussed above.

Accordingly, the rejections must be withdrawn.

Respectfully submitted,

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